

United States
Department of the Interior
Bureau of Land Management

Miles City Field Office

Federal Highway Administration

ROW MTM-105372

Categorical Exclusion (CX)
DOI-BLM-MT-C020-2013-0063-CX

For Further Information Please Contact:

Bureau of Land Management
Miles City Field Office
111 Garryowen Road
Miles City, Montana 59301
406-233-2800

BLM



UNITED STATES DEPARTMENT OF INTERIOR
BUREAU OF LAND MANAGEMENT
Miles City Field Office
111 Garryowen Road
Miles City, Montana 59301

CATEGORICAL EXCLUSION REVIEW AND APPROVAL

A. Background

BLM Office: Miles City Field Office

Serial Number: MTM-105372

NEPA Number (if applicable): DOI-BLM-MT-C020-2013-0063-CX

Proposed Action Title/Type:

Federal Highway Administration Rights-of-way MTM-105372

Location of Proposed Action (include county):

T. 3 S., R. 59 E., Section 13: SW $\frac{1}{4}$ SE $\frac{1}{4}$, Carter County, Montana, PMM

T. 4 S., R. 59 E., Section 15: NE $\frac{1}{4}$ SW $\frac{1}{4}$, Carter County, Montana, PMM

T. 5 S., R. 59 E., Section 5: Lot 10 and SE $\frac{1}{4}$ SW $\frac{1}{4}$, Carter County, Montana, PMM

Description of Proposed Action:

On August 8, 1963, the Montana Highway Commission was issued a right-of-way MTM-059440 for Montana Highway 323 between Ekalaka, Montana and Alzada, Montana. It was issued for a variable width. The Montana Department of Transportation (MDT) submitted a request to widen and upgrade this road. On July 23, 2001, the Federal Highway Administration (FHWA) was issued Right-of-way MTM-91060 for the upgrade. This right-of-way was issued to FHWA on behalf of MDT. FHWA has requested four locations for temporary construction areas for slope flattening, ditch widening, and scour repair. These areas consist of 1.27 acres, more or less. Montana Highway 323 is currently classified as a principal arterial and serves as an integral part of the regional transportation network. Pursuant to Title 23, U.S.C. Section 317 and the Interagency Agreement with the BLM, the Federal Highway Administration (FHWA) requests a temporary right-of-way to authorize MDT's construction project to upgrade the highway on Federal land (PD Land).

B. Land Use Plan Conformance

Land Use Plan Name: Powder River R. A. RMP/EIS ROD.

Date Approved/Amended: Approved on March 15, 1985.

The proposed actions are in conformance with the applicable LUP because it is specifically provided for in the following LUP decision(s): Page 4 of the ROD states that, "Rights-of-way applications will continue to be approved on a case-by-case basis with appropriate stipulations. Applicants are encouraged to locate new facilities within existing rights-of-way." The proposed

action has been reviewed for conformance with this plan and its terms and conditions as required by 43 CFR 1610.5

C: Compliance with NEPA:

The Proposed Action is categorically excluded from further documentation under the National Environmental Policy Act (NEPA) in accordance with 516 DM 6 Appendix 5.4E. (19) which states, "Issuance of short-term(3 years or less) rights-of-way or land use authorizations for such uses as storage sites, apiary sites, and construction sites where the proposal includes rehabilitation to restore the land to its natural or original condition." This categorical exclusion is appropriate in this situation because there are no extraordinary circumstances potentially having effects that may significantly affect the environment. The proposed action has been reviewed, and, as documented below, none of the extraordinary circumstances described in 516 DM2 apply.

Extraordinary Circumstances		
The project would:		
1. Have significant impacts on public health or safety.		
Yes	No X	Rationale: <i>This would improve the safety of the travelers in this area, but would not have significant adverse impacts.</i> DDL 1/16/2013
2. Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (Executive Order 11990); floodplains (Executive Order 11988); national monuments; migratory birds; and other ecologically significant or critical areas.		
Yes	No X	Rationale: <i>The project would not have significant adverse impacts.</i> DDL 1/16/2013
3. Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA section 102 (2) (E)].		
Yes	No X	Rationale: <i>There would be no controversial or unresolved conflicts.</i> DDL 1/16/2013
4. Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.		
Yes	No X	Rationale: <i>There would be no uncertain or potentially significant environmental effects/risks from this project.</i> DDL 1/16/2013
5. Establish a precedent for future action or represent a decision in principal about future actions with potentially significant environmental effects.		

Yes	No- X	Rationale: <i>This action is not connected to another action that would require additional environmental analysis nor will it set a precedent for future actions that would normally require environmental analysis.</i> DDL 1/16/2013
6. Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.		
Yes	No- X	Rationale: <i>There would be no cumulative adverse impacts from this project. See CFR 1508.7.</i> DDL 1/16/2013
7. Have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places as determined by either the bureau or office.		
Yes	No X	<p>Rationale: <i>Confirm that cultural surveys have been completed; the appropriate data bases have been reviewed; and appropriate concurrence from SHPO and tribes have been received indicating that significant impacts are not expected.</i></p> <p>The proposed action has been inventoried for cultural resources as part of projects related to improvements to Highway 323. No cultural resources are located in the any of the areas identified for modification. The proposed locations are located in the Pierre Shale Formation which has a PFYC rating of 3a. Scientifically important paleontological resources would not be impacted by the proposed undertaking. BLM has determined that the proposed undertaking would have no effect to cultural properties listed on or eligible for listing on the National Register of Historic Places (See BLM Cultural Resources Report MT-020-13-085).</p> <p><i>DM 01/21/2013</i></p>
8. Have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or have significant impacts on designated Critical Habitat for these species.		
Yes	No X	Rationale: No species listed as a threatened or endangered species or designated critical habitat occurs in project area. BJB 2/1/13
9. Violate a Federal law, or a State, local or tribal law or requirement imposed for the protection of the environment.		
Yes	No X	Rationale: <i>No laws are being violated by this action.</i> DDL 1/16/2013
10. Have a disproportionately high and adverse effect on low income or minority populations (Executive Order 12898).		


Yes	No X	Rationale: <i>This project does not have a disproportionately high and adverse effect on low income or minority populations.</i> DDL 1/16/2013
11. Limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites (Executive Order 13007).		
Yes	No X	Rationale: <i>Consultation with tribes regarding Indian sacred sites must take place</i> <i>The proposed action is located along a public highway, except for actual construction would not limit access to or use of public lands. Alternate access exists for public lands adjoining the improvement areas. No areas of concern are identified in or near the proposed action in the Ethnographic overview of Southeast Montana.</i> <i>DM 01/21/2013</i>
12. Contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act and Executive Order 13112).		
Yes	No X	Rationale: <i>The proposed action will not contribute to the spread of noxious weeds.</i> DDL 1/16/2013



 Signature of Environmental Coordinator

2/1/2013

 Date



 Signature of Supervisory Land Use Specialist

2/4/2013

 Date

Decision Record for Categorical Exclusion
Issue Rights-of-way MTM-105372 to FHWA for
Upgrade of Montana Highway 323
DOI-BLM-MT-C020-2013-0063-CX

Decision: I have made the decision to issue a Letter of Consent to the Federal Highway Administration for a temporary right-of-way MTM-105372 for construction area for Montana Department of Transportation's to upgrade four locations on Montana Highway 323 between Ekalaka and Alzada, Montana located on the following Federal land (PD Land):

- T. 3 S., R. 59 E., Section 13: SW $\frac{1}{4}$ SE $\frac{1}{4}$, Carter County, Montana, PMM
- T. 4 S., R. 59 E., Section 15: NE $\frac{1}{4}$ SW $\frac{1}{4}$, Carter County, Montana, PMM
- T. 5 S., R. 59 E., Section 5: Lot 10 and SE $\frac{1}{4}$ SW $\frac{1}{4}$, Carter County, Montana, PMM

The temporary right-of-way will consist of 1.27 acres, more or less. The standard stipulations for cultural and/or paleontological resource protection, toxic substances stipulation, weed control stipulation as well as stipulations in the Interagency Agreement between the Bureau of Land Management (BLM) and the Federal Highway Administration (FHWA) will be made a part of the Letter of Consent. The Letter of Consent will be issued pursuant to Title V of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761), Title 23, U.S.C. Section 317, and be subject all applicable provisions of the regulations at 43 CFR 2800 and the attached stipulations. The applicant is exempt from cost recovery fees and rental because they are a Federal agency, acting on the behalf of Montana Department of Transportation. The right-of-way will be monitored for use and before future renewal or termination.

Rationale for Decision: The proposed action meets the criteria for a categorical exclusion under 516 DM 11.9E (15) and none of the exceptions in 516 DM 2 apply. The proposed action is also in conformance with the Powder River RMP/EIS ROD, which was approved in March 15, 1985.

I considered the proposed actions and associated stipulations which will be included in the Letter of Consent and are attached below. There is no potential for significant impacts. Use of this CX is appropriate and I have decided to implement this action.

D: Signature



Signature of Authorizing Official

2/5/2013

Date

Name: Todd D. Yeager

Title: Field Manager

Contact Person

For additional information concerning this CX review and decision, contact:

Dalice Landers, Realty Specialist (406-233-2836)
BLM – Miles City Field Office
111 Garryowen Road
Miles City, Montana 59301

Administrative Review or Appeal Opportunities

A BLM decision to issue a ROW may be appealed under regulations in 43CFR 2801.10 and in accordance with part 4 of 43 CFR. A BLM decision affecting a ROW application carries the “full force and effect” of the decision. Under full force and effect the decision can be implemented immediately even if the decision is appealed to the IBLA. An affected party has the opportunity to file a petition for a stay with an appeal to the IBLA. The decision to issue a ROW in full force and effect requires information on petitions for stay to be included with the decision notification. The decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and information on BLM Form 1842-1. If an appeal is taken, the notice of appeal must be filed in the Miles City Field Office at 111 Garryowen Road, Miles City, Montana 59301 within 30 days from receipt of the decision issuing the decision. The appellant has the burden of showing that the decision appealed from is in error.

If a petition (request) is filed pursuant to regulation 43 CFR 2801.10 for a stay (suspension) of the effectiveness of the decision during the time that the appeal is being reviewed by the Board, the petition for a stay must accompany the notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in the decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with the Miles City Field Office. If a stay is requested, the requester has the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.

Stipulations

1. If outstanding valid claims exist on the date of this use authorization, the State agency shall obtain such permission as may be necessary on account of any such claims.
2. The use right herein authorized shall terminate three years, or sooner if agreed upon, from the date of issuance of the Letter of Consent.
3. The use right herein authorized is limited to the described short-term right-of-way and the space above and below for highway purposes and does not include any use rights for non-highway purposes.
4. Retention of rights by BLM to use, or authorized use on, any portion of the permanent for non-highway purposes provided such use would not interfere with the free flow of traffic, impair the full use and safety of the highway, or be inconsistent with the provisions of Title 23 of the United States Code and the FHWA regulations pursuant thereto, and the FHWA and the State agency concerned shall be consulted prior to exercising such rights.
5. Location by BLM of any Bureau information signs on the portions of the right-of-way outside of construction clearing limits except that such signs shall not be located on the right-of-way of an Interstate System.
6. Consistent with highway safety standards, the State agency shall:
 - a. Protect and preserve soil and vegetative cover and scenic and aesthetic values on the right-of-way outside of construction limits.
 - b. Provide for the prevention and control of soil erosion within the right-of-way and adjacent lands that might be affected by the construction, operation, and maintenance of the highway.
 - c. Vegetate and keep vegetated with suitable species all earth cut or fill slopes feasible for revegetation or other areas on which ground cover is destroyed where it is deemed necessary prior to completion of the highway and shall maintain terracing, water bars, leadoff ditches, or other preventive works that may be required to accomplish this objective. This provision shall also apply to slopes that are reshaped following slides which occur during or after construction.
7. No sites for highway-operation and maintenance facilities, camps, supply depots, or disposal areas within the right-of-way area may be established without obtaining approval of the BLM authorized officer.
8. Application of chemicals shall be pursuant to the National Environmental Policy Act and shall be approved by FHWA prior to the application by the State.

9. When the need for the appropriation no longer exists and the State has reasonably rehabilitated the area to protect the public and environment, FHWA will notify BLM in writing. Upon receipt of this notice and acceptance of the rehabilitation, the lands appropriates shall revert to the BLM.

10. The provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 242) shall be complied with.

11. Any cultural and/or paleontological resource (historic or prehistoric site or object) discovered by the holder, or any person working on his behalf on public or Federal land shall be immediately reported to the authorized officer. Holder shall suspend all operations in the immediate area of such discovery until written authorization to proceed is issued by the authorized officer. An evaluation of the discovery will be made by the authorized officer to determine appropriate actions to prevent the loss of significant cultural or scientific values. The holder will be responsible for the cost of evaluation and any decision as to proper mitigation measures will be made by the authorized officer after consulting with the holder.

12. The holder shall be responsible for weed control on disturbed areas within the limits of the right-of-way. The holder is responsible for consultation with the authorized officer and/or local authorities for acceptable weed control methods (within limits imposed in the grant stipulations).

13. No construction or routine maintenance activities shall be performed during periods when the soil is too wet to adequately support construction equipment. If such equipment creates ruts in excess of four (4) inches deep, the soil shall be deemed too wet to adequately support construction equipment.

14. The holder shall conduct all activities associated with the construction, operation, and termination of the right-of-way within the authorized limits of the right-of-way.

15. The holder(s) shall comply with all applicable Federal laws and regulations existing or hereafter enacted or promulgated. In any event, the holder(s) shall comply with the Toxic Substances Control Act of 1976, as amended (15 U.S.C. 2601, et seq.) with regard to any toxic substances that are used, generated by or stored on the right-of-way or on facilities authorized under this right-of-way grant. (See 40 CFR, Part 702-799 and especially, provisions on polychlorinated biphenyls, 40 CFR 761.1-761.193.) Additionally, any release of toxic substances (leaks, spills, etc.) in excess of the reportable quantity established by 40 CFR, Part 117 shall be reported as required by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Section 102b. A copy of any report required or requested by any Federal agency or State government as a result of any reportable release or spill of any toxic substances shall be furnished to the authorized officer concurrent with the filing of the reports to the involved Federal agency or State government.

16. The holder shall coordinate with the existing right-of-way holders, grazing lessees/permittees, and other parties who hold an authorized right on adjacent and affected lands.

17. The work will be completed in compliance with the stipulations in the application and mitigation identified in the MDT's environmental document (CE).

18. Topsoil shall be conserved during excavation and reused as cover on disturbed areas to facilitate regrowth of vegetation.

19. The holder shall seed all disturbed areas with the seed mixture listed below. The seed mixture shall be planted in the amounts specified in pounds of pure live seed (PLS)/acre. There shall be no primary or secondary noxious weed seed in the seed mixture. Seed shall be tested and the viability testing of seed shall be done in accordance with State law(s) and within six months prior to purchase. Commercial seed shall be either certified or registered seed. The seed mixture container shall be tagged in accordance with State law(s) and available for inspection by the authorized officer.

Seed shall be planted using a drill equipped with a depth regulator to ensure proper depth of planting where drilling is possible. The seed mixture shall be evenly and uniformly planted over the disturbed area. (Smaller/heavier seeds have a tendency to drop to the bottom of the drill and are planted first. The holder shall take appropriate measures to insure this does not occur.) Where drilling is not possible, seed shall be broadcast and the area shall be raked or chained to cover the seed. When broadcasting the seed, the pounds per acre noted below are to be doubled. The seeding will be repeated until a satisfactory stand is established as determined by the authorized officer. Evaluation of growth will not be made before completion of the second growing season after seeding. The authorized officer is to be notified a minimum of seven (7) days prior to seeding of the project.

Seed Mixture (clayey) - Western wheatgrass must be included in the mix. Thickspike wheatgrass may be substituted only when western wheatgrass is unavailable. The combination for the seed mixture must include at least four of the following species including Western wheatgrass:

<i>Species of Seed</i>	<i>(Variety)</i>	<i>Common Name</i>	<i>Pounds/acre *(PLS)</i>
<u>Pascopyrum smithii</u>	(Rosanna)	Western wheatgrass	3.00
<u>Pseudoroegneria spicata</u>	(Goldar)	Bluebunch wheatgrass	2.00
<u>Stipa viridula</u>	(Lodom)	Green needlegrass	2.00
<u>Elymus trachycaulus</u>	(Pryor)	Slender wheatgrass	2.00
<u>Stipa comata</u>		Needleandthread	1.00
<u>Bouteloua curtipendula</u>		Sideoats Grama	2.00
<u>Schizachyrium scoparium</u>		Little bluestem	2.00

**Pure Live Seed (PLS) formula: % of purity of seed mixture times % germination of seed mixture = portion of seed mixture that is PLS.*

20. Fences, gates, and brace panels shall be reconstructed to appropriate Bureau standards and/or specifications as determined by the authorized officer (*For areas where sheep are present or currently authorized: four-strand fence with spacing from the ground 12", 22", 30", and 42" with the bottom wire smooth. Where cattle are present or currently authorized: four-strand fence with spacing from the ground of 16", 22", 30", and 42" with bottom wire smooth.*)

21. This letter of consent is issued subject to the holder's compliance with the mitigations set forth in the application/plan of development.

22. In the event that the public land underlying the right-of-way (ROW) encompassed in this grant, or a portion thereof, is conveyed out of Federal ownership and administration of the ROW or the land underlying the ROW is not being reserved to the United States in the patent/deed and/or the ROW is not within a ROW corridor being reserved to the United States in the patent/deed, the United States waives any right it has to administer the right-of-way, or portion thereof, within the conveyed land under Federal laws, statutes, and regulations, including the regulations at 43 CFR Part 2800, including any rights to have the holder apply to BLM for amendments, modifications, or assignments and for BLM to approve or recognize such amendments, modifications, or assignments. At the time of conveyance, the patentee/grantee, and their successors and assigns, shall succeed to the interests of the United States in all matters relating to the right-of-way, or portion thereof, within the conveyed land and shall be subject to applicable State and local government laws, statutes, and ordinances. After conveyance, any disputes concerning compliance with the use and the terms and conditions of the ROW shall be considered a civil matter between the patentee/grantee and the ROW Holder.